

Planning & Development Committee
October 21, 2015 – 5:30 p.m.
1st Fl. Council Committee Room – City Hall
-Minutes-

Present: Chair, Councilor Greg Verga; Vice Chair, Councilor Paul Lundberg; Councilor Steven LeBlanc
Absent: None.

Also Present: Linda T. Lowe; Chip Payson; Gregg Cademartori

The meeting was called to order at 5:33 p.m. Councilor LeBlanc entered the meeting at 5:35 p.m.

1. Special Events Applications:

A) Request to hold the Gloucester Christmas Parade and Tree Lighting on November 29, 2015

Councilor Verga said that Councilor Ciolino was unable to attend this evening's meeting but that he and the Councilor spoke about the particulars. He advised that the event was reviewed at the Special Events Advisory Committee, and that nothing is changed from the previous year's event. It was noted that a memo is on file from the Chief Administrative Officer acknowledging the city's liability insurance will cover the event.

COMMITTEE RECOMMENDATION: On a motion by Councilor LeBlanc, seconded by Councilor Lundberg, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit the Downtown Gloucester Christmas Parade and Tree Lighting from 3 p.m. to 7 p.m. on Sunday, Nov. 29, 2015 which starts at the Jodrey State Fish Pier and ends at Kent Circle, with a rain date of Sunday, Dec. 6, 2015. Sign offs from the Fire and Police Departments and other interested city departments are to be on file as well as written documentation of the parade route in the City Clerk's Office and proof of insurance coverage as a sanctioned event by the City of Gloucester, which falls under the City's General Liability Insurance.

B) Lobster Trap Tree Lighting on December 12, 2015

David Brooks, representing ArtHaven, said that he met with the Special Events Advisory Committee, and that this is the first year the event is coming forward for permitting because Main Street for one block is closed for about two hours, from 3:30 to 5:30 p.m. during the event. He said ArtHaven sponsors the buoy painting in order to hang them on the tree, and that after the holiday season holds a fundraiser auctioning off the buoys. He noted there would be an emcee for the event, and perhaps some carolers.

Councilor Verga said that both this and the previously permitted event don't need to have Council approval.

COMMITTEE RECOMMENDATION: On a motion by Councilor Lundberg, seconded by Councilor LeBlanc, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit the Lighting of the Lobster Trap Tree, sponsored by Cape Ann Art Haven, to take place at 198 Main Street adjacent to the Gloucester Police Department building from 4:30 p.m. to 5:30 p.m. on Saturday, Dec. 12, 2015, with a rain date of Sunday, Dec. 13, 2015. Sign offs from the Fire and Police Departments and other interested city departments are to be on file as well as written documentation of the Main Street road closure in the City Clerk's Office and proof of insurance coverage as a sanctioned event by the City of Gloucester, which falls under the City's General Liability Insurance.

2. CC2015-007 Request informal review under GZO 1.11.3 with City Staff for informal review of Sections 5.13 Personal Wireless Service Facility and to retain expert legal counsel in order to amend & update the Zoning Ordinance and that the P&D Committee or its designated member work together with city Planning Director and General Counsel with outside expert legal counsel to recommend to the City Council amendments to Sec. 5.13 of the Zoning Ordinance so that it is compliance with current applicable federal laws & regulations (Cont'd from 10/07/15)

Jeff Roelofs, city consultant on the drafting of a new Personal Wireless Service Facility, said that he had hoped to have a draft for the Committee, but assured that something should be to them prior to the next meeting. He said the impetus for the effort was the change in 2012 of federal law and existing facilities modification. There are certain colocations and modifications that local municipalities have to approve within 60 days. The review process

associated with those applications determines if what is being proposed by an applicant falls into that category. The question is who makes that determination -- the Building Inspector with input with the Planning Office and/or with some input from the public -- there are many different options available when the proponent is claiming the modification is as-of-right. It is important to note that these modifications include extending the height of a cell tower, **Mr. Roelofs** said. He gave the example that with a cell tower permitted for 130 feet, federal law says the telecommunications company may extend the height by 10 feet in order to accommodate to another carrier. He also noted that the city is required by federal law to allow additional antennas on a building that already has an installation. He advised that this process is one that requires some thought in order to allow the city to get ahead of requests. He said the review process will be quick -- 60 days from start to finish, so it is important that the information submitted in an application enable reviewers to understand what is being proposed, see where it fits into one of four categories that are proposed for this ordinance revision, and then decide which the appropriate process is. He said that there aren't currently models available in Massachusetts to draw on, but advised there were outside of the state. He assured by the next meeting he will be proposing a separate section to the ordinance.

Mr. Roelofs reviewed that the current GZO Sec. 5.13 is 20 pages long which is comprehensive but confusing, for the applicants, the public and city staff. The ordinance can be simplified, and there are different possibilities for its restructuring so applicants, the special permit granting authorities and concern residents can read and understand it. Ideally one should be able to understand what requirements apply to each of the different categories and what the associated review process is. He highlighted that the review process is to be simplified as well.

He suggested as a starting point to break out the facilities and review processes into four categories:

- The first category would encompass as-of-right modifications imposed on the city by federal law.
- The second category would be certain facilities as-of-right even though they are new facilities and don't fall into the first category -- such as allowing concealed facilities (within a church steeple or some other structure and not visible from the outside for instance) under certain conditions, to proceed as-of-right through a Building Department application without a public hearing or special permit process.

The third and fourth permitting categories would both fall under the special permit process which constitutes a significant change in the Zoning Ordinance.

- The third category would encompass simpler projects that don't have a huge impact on city. Instead of putting those projects that are deemed simpler, those project into a special permitting process with the Planning Board. It was pointed out that the Planning Board already has special permit granting authority for certain types of developments; the Zoning Ordinance could put some types of facilities into their process because it is more straightforward and simpler process than the City Council process. He gave examples of antennas mounted on buildings (such as on a downtown rooftop on Pleasant and Main Street), façade mounted (as found at the Addison Gilbert Hospital), facilities on existing structures like those mounted on city water tanks -- those installations that don't change the landscape as a new tower.
- The fourth category would be a Special Council Permit process for new cell towers, regardless of their location; modification to new towers that don't fall into the first category (the federal as-of-right category) because if 20 feet is added to an existing tower it is significant enough that the Council might want to review that kind of modification through their Special Permit process. Also the Council may wish to consider other kinds of building mounted or other types of facilities in certain zoning districts.

Mr. Roelofs explained that through this drafting process he's tried to categorize the types of facilities, and then they need to decide -- which applications are deemed appropriate for the more streamlined Planning Board permitting process and which applications are more appropriate for the Council permitting process.

He advised that within the Zoning Ordinance there would be a listing of the requirements for each of the categories which should enable anyone to quickly see what are the application filing requirements, the review procedures. There would be standards that the city would want imposed for each category -- for instance if this was a building-mounted facility being reviewed by the Planning Board, there could be a list of constraints on what the Planning Board can allow but not if it exceeds certain height and setback provisions. Then there would be a list of the mandatory findings by the special permit granting authority has to make in order to approve the facility. Then there is the authority to condition a facility, and the types of conditions the Planning Board can impose. By listing them it gives the applicant a checklist which may include constraints on height, color, maintenance on perimeter fencing, landscaping buffers, etc. The parameters the ordinance should try to lay out is done in such a way to allow for a simple linear analysis that is easy to follow, and therefore easier to write decisions. Each special permit may have provisions with the authority to hire consultants at applicant's costs to review applications in these two categories which **Mr. Roelofs** said are typical.

He suggested that there are parts of the current GZO Sec. 5.13 that should be dropped completely such as limiting the height of a tower to 10 feet above the average tree canopy if the idea is to maximize co-location. The

Council might decide that for a particular tower at a particular location that may be capable of accommodating four telecommunications carriers that it is too sensitive an area, although that same tower may appropriate for one carrier. In other words, the Council would have the ability to make site-specific determinations and put constraints on it. Finally, he suggested building into each special permit processes consideration of what might happen down the road through the first category, the federal as-of-right modifications. He advised that if the Council approved something tomorrow, the Council needs to realize that the first category can get kicked in immediately after that tower is built to expand on what was just approved. He suggested that they could build into the special permit process some discussion by the applicant on co-locations and modifications as-of-right that the applicant thinks can be made to this particular facility in the future once the project is permitted.

Councilor Verga said that the last point was an extremely good point because an applicant may say they're going to start out with a tower at 100 feet which is approved but then suddenly have two new interested telecommunications companies wanting to co-locate on that newly approved tower and then want the height raised.

Councilor Lundberg said that when he, Mr. Roelofs, Mr. Payson and Mr. Cademartori brainstormed as to what should be embraced within the revised ordinance, it went in the direction Mr. Roelofs has outlined.

Councilor LeBlanc expressed his agreement that that permitting processes should be as simple as possible, noting that many ordinances were written to prevent certain things throughout the city. He pointed out that it needs to be made clear what can be done and what can't be done with any grey areas. He also expressed concern about the federal as-of-right legislation and its impact particularly as it pertained to Mr. Roelofs last point. **Mr. Roelofs** said the ability by a telecommunications company to come in and add 10 feet is reviewed cumulatively. The ability to come in and add 10 feet is a one-time thing. He advised that under the current federal law a tower company could come in and adds 10 feet but there are a certain number of cumulative changes that can be made as-of-right and then the changes after that aren't as-of-right and the tower company must go back to the special permit application process.

Councilor LeBlanc mentioned concealed facilities such as the one mounted within the Annisquam Village Church steeple. He recalled that when that facility was last modified the neighbors expressed health concerns over radio frequency emissions and the possible impact on their neighborhood, although it was noted in on file documentation that the emissions were nowhere near federal limits. He said that it would be good to have some kind of public process to address the public's concern.

Chip Payson, General Counsel, said there is a spectrum of projects from the most controversial to those that are a matter of as-of-right. The city can't do anything to block those applications that fall under the federal as-of-right modifications. He said it is where within that spectrum are this Committee and Council most comfortable to draw the line where applications can go to a more streamlined process and in which instances are the more potentially problematic applications be deemed to go through a more strenuous analytical process. The question, he said, is where that line in that spectrum is. **Councilor Verga** said that a new tower should be subjected to a more strenuous process. He recounted that this Council and the last several Councils were willing to hand certain aspects of permitting off to other Boards and Commissions, but even with those permitting processes that were handed off there still is a public process to handle those applications and permitting.

Councilor Verga questioned when peer review should kick in to advise whether an application falls under the federal as-of-right purview. **Mr. Roelofs** said the provisions he is starting to draft related to the federal as-of-right category would include the opportunity for whoever is doing the administrative review, be it the Building Department or the Planning Department, to require the applicant to pay for a peer review if that reviewer determines it is warranted. He suggested it is reasonable to do that because an applicant may be proposing something that may fall within certain parameters of the as-of-right category, but there are a lot of variations of antenna types, and if reviewer doesn't like the facility even though it is an as-of-right facility, it doesn't mean there can't be a requirement for some modification of the proposed facility modification. A consultant may offer better options for that particular proposal, he said. If the applicant doesn't want to make those suggested modifications, there would be criteria written into the ordinance that the city could say as proposed by the applicant they don't think it falls into this category because it is viewed as a substantial change to what was presented. As a result, he indicated that the application can then be shepherded into a special permitting process. The peer review would be at applicant's cost in all categories, he noted. **Councilor Verga** said having that peer review safeguard in place is reassuring. **Mr. Roelofs** suggested that the concealed as-of-right facility category he would leave that on the table to consider, although in the end, the Committee may decide that in the redrafting of the ordinance they don't want any such facilities as of right, other than the federal as-of-right modifications. He said they may if certain requirements are imposed on what needs to be filed with that application. He noted that under federal law municipalities aren't able to impose certain requirements or regulate structures based on perceived health effects. That can be stated so that residents know that, but they could have the applicant when they file of the as-of-right application to provide

documentation that they meet the FCC requirements on emissions, which could provide piece of mind through information required to be filed by the applicant. Such an application could be sent through the Planning Board permitting process also, he suggested.

Gregg Cademartori, Planning Director, said that about three applications ago there was a peer review consultant was hired by the city where it was stated that there would have essentially been a string of 300 antennas on one installation for it to start to meet the federal threshold for health concerns from radiation. He said that in his opinion that if there is FCC regulation of what can or can't be placed in certain types of installations in a concealed facility or a building mounted facility, to the extent that if can't add any additional health regulation as was just suggested, and there is a standard that has to be certified, it may be advantageous to move these concealed facilities into as-of-right because providers may start to see that as a solution. He said there needs to be a determination between facilitating certain types of new installations and where the telecommunications industry standards are now for the types of service being provided.

Councilor Verga said this ordinance was written to prevent facilities due to fear of radiation and aesthetic concerns as opposed to facilitating them. He suggested requiring all applicants to have independent RFR studies and paying into a specific revolving fund to train firefighters need to be reexamined and likely eliminated. He said the structure of the four categories that were suggested are a good start, and that it makes sense to have the by-right clarified in the ordinance and send as The criteria laid out is a great start and that the categories, particularly the as-of-right, will be helpful. New tower construction should go to the Council, he said

Mr. Roelofs added that though Gloucester's regulations pertaining to telecommunication facilities at present are considered difficult, he expressed he was perplexed why more telecommunications services weren't available in the community and that he doubted it was due to regulatory hurdles. If there is an area where a tower company can negotiate a lease for land and believe they can provide good coverage they come in and ask for variances and do what they need to do to permit an installation, he said. He suggested that perhaps if potential applicants see a shorter permitting process they may put a higher priority on permitting new facilities.

This matter is continued to November 10, 2015.

3. *CC2015-037 (LeBlanc) Request City Council amend GZO Sec. VI definition of "Junk Yard" and Amend GCO Chapter 19, Sec. 19-30(b), Sec. 19-32, Sec. 19-1, Sec. 19-1(3), Sec. 19-1(4)*

To be continued to Nov. 10 pending a recommendation of the Planning Board.

4. *CC2015-039 (McGeary) Amend GZO Sec. 5.5 "Lowlands Requirements" (Also referred to PB)*

To be continued to Nov. 10 pending a recommendation from the Planning Board.

5. *CC2015-040 (Ciolino) Amend GZO to create an "Atlantic Road Overlay District" (Also referred to PB)*

To be continued to Nov. 10 pending a recommendation of the Planning Board.

A motion was made, seconded and voted unanimously to adjourn the meeting at 6:10 p.m.

Respectfully submitted,

Dana C. Jorgensson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.